

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AARON SLEDGE,

Plaintiff,

v.

CHARLES DANIELS, *et al.*,

Defendants.

Case No. 3:23-CV-00140-ART-CLB

**REPORT AND RECOMMENDATION OF
U.S. MAGISTRATE JUDGE¹**

[ECF Nos. 31, 32]

This case involves a civil rights action filed by Plaintiff Aaron Sledge (“Sledge”) against Defendants Charles Daniels, Kody Holloway, Kyle Olsen, and Robert Suwe (collectively “Defendants”). Pending before the Court is Sledge’s Motion for Summary Judgment. (ECF No. 31.) Defendants opposed, (ECF No. 35), and Sledge replied, (ECF Nos. 37, 39). Defendants also filed a Motion for Summary Judgment, (ECF No. 32), which Sledge opposed, (ECF No. 36), and Defendants replied, (ECF No. 38). For the reasons stated below, the Court recommends Defendants’ motion, (ECF No. 32), be granted and Sledge’s motion, (ECF No. 31.) be denied.

I. FACTUAL BACKGROUND² AND PROCEDURAL HISTORY

Sledge is an inmate in the custody of the Nevada Department of Corrections (“NDOC”). (ECF No. 1-1 at 1.) During the events of this case, Sledge was housed at Warm Springs Correctional Center (“WSCC”) (*Id.*)

In 2020, the NDOC enforced a policy to inspect and if necessary, open and search, mail suspected of containing contraband. (ECF No. 32-18.) If mail was suspected of containing narcotics, the mail would be opened and tested for controlled substances. (*Id.*) Any mail that was found to contain illegal substances or contraband would be considered

¹ This Report and Recommendation is made to the Honorable Anne R. Traum, United States District Judge. The action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and LR IB 1-4.

² The following facts are provided from the parties’ briefing and submitted exhibits are undisputed unless otherwise noted.

1 “rejected” and the inmate would receive notice of the rejected the item and the reasons
2 for the rejection. (ECF No. 32-2.)

3 On September 18, 2020,³ WSCC received mail addressed to Sledge. (ECF No.
4 32-6.) The mail was suspected of containing illegal contraband. (*Id.*) Officer Kody
5 Holloway (“Officer Holloway”) inspected the mail and “noticed several pages were coated
6 in an unknown liquid and emanating an unusual smell.” (ECF No. 32 at 3 (citing ECF No.
7 32-6).) Officer Holloway tested the pages, which resulted in a presumptive positive result
8 for a controlled substance. (ECF No. 32-6.) Officer Holloway issued an investigation
9 report which is provided to the Court as Exhibit G to Defendants’ motion. (*Id.*) On October
10 16, 2020, Sledge received a “Notice of Charge” related to the September incident and
11 was informed he was being charged with conspiracy to bring drugs into WSCC. (ECF No.
12 32-5.) Sledge was told to review Officer Holloway’s investigation report and provided the
13 specific report number for Sledge’s reference. (*Id.*)

14 On December 16, 2020, Sledge’s disciplinary hearing related to the September
15 incident took place. (ECF No. 32 at 4.) Sledge was asked if he spoke English, which was
16 answered affirmatively. (*Id.*) Sledge was asked if he wanted substitute counsel, to which
17 he stated no. (*Id.*) Sledge was asked if he would like to call witnesses, which he declined.
18 (*Id.*) Sledge was provided the opportunity to, and did speak to, the hearing officer
19 regarding the incident. (*Id.*) The hearing officer reviewed Officer Holloway’s report from
20 the September incident and spoke with him over the phone. (*Id.*) After reviewing all the
21 evidence, the hearing officer dismissed the charge, and no sanctions were imposed on
22 Sledge pertaining to the September incident. (ECF No. 32-3.)

23 On October 30, 2020,⁴ Office Holloway reviewed mail for inmates on the mail
24 monitoring list. (ECF No. 32-10.) On that day, mail that was determined to be for Sledge
25 was inspected and found to be “coated in an unknown liquid with an unusual smell

26 ³ The Court refers to events related to the September 18, 2020 mail inspection as
27 the “September incident.”

28 ⁴ The Court refers to events related to the October 30, 2020 mail inspection as the
“October incident.”

1 emanating from it.” (*Id.*) Officer Holloway tested the mail which resulted in presumptively
2 positive result for a controlled substance. (*Id.*) Officer Holloway issued an investigation
3 report which is provided to the Court as Exhibit K to Defendants’ motion. (*Id.*) On the
4 same day, Sledge received a “Notice of Charge” related to the October incident and was
5 informed he was being charged with conspiracy to bring drugs into WSCC. (ECF No. 32-
6 9.) Sledge was informed to review Officer Holloway’s investigation report and provided
7 the specific report number for Sledge’s reference. (*Id.*)

8 On December 12, 2020, Sledge’s disciplinary hearing related to the October
9 incident took place. (ECF No. 32 at 5.) Sledge was asked if he spoke English, which was
10 answered affirmatively. (*Id.*) Sledge was informed that he had a right to substitute counsel
11 for the limited purpose of helping Sledge understand an issue if an issue was too complex
12 or if he did not understand the purpose of the hearing. (*Id.*) Sledge explicitly chose to
13 proceed with the hearing without substitute counsel. (*Id.*) Sledge was provided the
14 opportunity to, and did speak, to the hearing officer regarding the incident. (*Id.*) At the
15 hearing, Sledge asked to review the evidence but was informed that much the evidence
16 used during the hearing was confidential to ensure information regarding NDOC
17 safeguards are not disseminated to inmates. (*Id.* at 6.) Sledge was asked if he would like
18 to call witnesses and Sledge asked for Officer Holloway to be made available. (*Id.*) The
19 disciplinary hearing officer stated Officer Holloway was not able to attend the hearing as
20 he was not working that day. (*Id.*) The hearing officer further stated Officer Holloway was
21 not needed since his report was available for review and further testimony “would have
22 been cumulative and unnecessary.” (*Id.* at 22.) The hearing officer found Sledge guilty of
23 conspiracy to introduce drugs into WSCC during the October incident and Sledge was
24 sanctioned with a loss of sixty statutory good time credits and required to pay restitution
25 toward the cost of the drug tests. (*Id.* at 6.) Ultimately, Sledge was not required to pay
26 restitution. (*Id.*)

27 Following the hearings, Sledge filed a grievance challenging the decision from the
28 October incident disciplinary hearing. (ECF No. 32-14 at 5.) Sledge’s grievances were

1 denied because sanctions were found to be proper for the October incident and that some
2 of the evidence he was requesting to review could not be provided due to the confidential
3 and sensitive nature of the information within. (*Id.*)

4 Between the September incident and the December 2020 hearings, Sledge did not
5 issue kites for the evidence or investigation reports related to either the September or
6 October incidents. (ECF No. 32-16.) On November 6, 2020, Sledge filed an informal
7 grievance acknowledging he had received the notice of charges for both incidents but
8 that he did not have an opportunity to review the facts regarding the charges and he did
9 not receive an unauthorized mail form. (ECF No. 32-14 at 9.) In response, the NDOC
10 informed Sledge that a form was filed. (*Id.*) Sledge filed a second grievance on November
11 19, 2020, but was informed that because he never signed the grievance, the grievance
12 was considered abandoned. (*Id.* at 8.) Neither grievance was appealed. (*Id.*) Pursuant to
13 NDOC Administrative Regulations, “an inmate shall file a grievance after failing to resolve
14 the matter by other means such as discussion with staff or submitting an inmate request
15 form.” (ECF No. 32-20 at 9.)

16 On March 31, 2023, Sledge initiated the present suit against Defendants. (ECF
17 Nos 1, 4.) In its Screening Order, the Court permitted Sledge’s Fourteenth Amendment
18 disciplinary due process claim against Daniels, Suwe, Peterman⁵, Daniels, and Olson to
19 proceed. (ECF No. 3 at 6.) On February 24, 2024, Sledge moved for summary judgment.
20 (ECF No. 31.) Defendants opposed, (ECF No. 35), and Sledge replied, (ECF Nos. 37;
21 39). On March 7, 2025, Defendants also moved for Summary Judgment. (ECF No. 32.)
22 Sledge opposed, (ECF No. 36), and Defendants replied, (ECF No. 38).

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26 ⁵ On November 21, 2024, the Court issued a notice of intent to dismiss pursuant to
27 Fed. R. Civ. P. 4(m), because service on Defendant Peterman had not been effectuated.
28 (See ECF No. 26.) To date, no proof of service has been filed as to Defendant Peterman.
Thus, the Court recommends the claims against Defendant Peterman be dismissed
without prejudice based on a failure to effectuate service pursuant to Fed. R. Civ. P. 4(m).

II. LEGAL STANDARD

“The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). The substantive law applicable to the claim determines which facts are material. *Coles v. Eagle*, 704 F.3d 624, 628 (9th Cir. 2012) (citing *Anderson v. Liberty Lobby*, 477 U.S. 242, 248 (1986)). Only disputes over facts that address the main legal question of the suit can preclude summary judgment, and factual disputes that are irrelevant are not material. *Frlekin v. Apple, Inc.*, 979 F.3d 639, 644 (9th Cir. 2020). A dispute is “genuine” only where a reasonable jury could find for the nonmoving party. *Anderson*, 477 U.S. at 248.

The parties subject to a motion for summary judgment must: (1) cite facts from the record, including but not limited to depositions, documents, and declarations, and then (2) “show[] that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.” Fed. R. Civ. P. 56(c)(1). Documents submitted during summary judgment must be authenticated, and if only personal knowledge authenticates a document (i.e., even a review of the contents of the document would not prove that it is authentic), an affidavit attesting to its authenticity must be attached to the submitted document. *Las Vegas Sands, LLC v. Neheme*, 632 F.3d 526, 532-33 (9th Cir. 2011). Conclusory statements, speculative opinions, pleading allegations, or other assertions uncorroborated by facts are insufficient to establish the absence or presence of a genuine dispute. *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007).

The moving party bears the initial burden of demonstrating an absence of a genuine dispute. *Id.* “Where the moving party will have the burden of proof on an issue at trial, the movant must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party.” *Id.* However, if the moving party does not bear the burden of proof at trial, the moving party may meet their initial burden by demonstrating either: (1) there is an absence of evidence to support an essential element of the nonmoving

1 party's claim or claims; or (2) submitting admissible evidence that establishes the record
2 forecloses the possibility of a reasonable jury finding in favor of the nonmoving party. See
3 *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d 565, 593-94 (9th Cir. 2018); *Nissan*
4 *Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1102 (9th Cir. 2000). The court views
5 all evidence and any inferences arising therefrom in the light most favorable to the
6 nonmoving party. *Colwell v. Bannister*, 763 F.3d 1060, 1065 (9th Cir. 2014). If the moving
7 party does not meet its burden for summary judgment, the nonmoving party is not required
8 to provide evidentiary materials to oppose the motion, and the court will deny summary
9 judgment. *Celotex*, 477 U.S. at 322-23.

10 Where the moving party has met its burden, however, the burden shifts to the
11 nonmoving party to establish that a genuine issue of material fact actually exists.
12 *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). The
13 nonmoving must "go beyond the pleadings" to meet this burden. *Pac. Gulf Shipping Co.*
14 *v. Vigorous Shipping & Trading S.A.*, 992 F.3d 893, 897 (9th Cir. 2021) (internal quotation
15 omitted). In other words, the nonmoving party may not simply rely upon the allegations or
16 denials of its pleadings; rather, they must tender evidence of specific facts in the form of
17 affidavits, and/or admissible discovery material in support of its contention that such a
18 dispute exists. See Fed. R. Civ. P. 56(c); *Matsushita*, 475 U.S. at 586 n. 11. This burden
19 is "not a light one," and requires the nonmoving party to "show more than the mere
20 existence of a scintilla of evidence." *Coomes v. Edmonds Sch. Dist. No. 15*, 816 F.3d
21 1255, 1259 n.2 (9th Cir. 2016) (quoting *In re Oracle Corp. Sec. Litig.*, 627 F.3d 376, 387
22 (9th Cir. 2010)). The non-moving party "must come forth with evidence from which a jury
23 could reasonably render a verdict in the non-moving party's favor." *Pac. Gulf Shipping*
24 *Co.*, 992 F.3d at 898 (quoting *Oracle Corp. Sec. Litig.*, 627 F.3d at 387). Mere assertions
25 and "metaphysical doubt as to the material facts" will not defeat a properly supported and
26 meritorious summary judgment motion. *Matsushita*, 475 U.S. at 586-87.

27 When a *pro se* litigant opposes summary judgment, his or her contentions in
28 motions and pleadings may be considered as evidence to meet the non-moving party's

1 burden to the extent: (1) contents of the document are based on personal knowledge, (2)
2 they set forth facts that would be admissible into evidence, and (3) the litigant attested
3 under penalty of perjury that they were true and correct. *Jones v. Blanas*, 393 F.3d 918,
4 923 (9th Cir. 2004).

5 Upon the parties meeting their respective burdens for the motion for summary
6 judgment, the court determines whether reasonable minds could differ when interpreting
7 the record; the court does not weigh the evidence or determine its truth. *Velazquez v. City*
8 *of Long Beach*, 793 F.3d 1010, 1018 (9th Cir. 2015). The court may consider evidence in
9 the record not cited by the parties, but it is not required to do so. Fed. R. Civ. P. 56(c)(3).
10 Nevertheless, the court will view the cited records before it and will not mine the record
11 for triable issues of fact. *Oracle Corp. Sec. Litig.*, 627 F.3d at 386 (if a nonmoving party
12 does not make nor provide support for a possible objection, the court will likewise not
13 consider it).

14 **III. DISCUSSION**

15 **A. Defendants' Motion for Summary Judgment**

16 Defendants move for summary judgment on Sledge's claim of lack of due process
17 in his disciplinary proceedings. (ECF No. 32.) Defendants concede Sledge has a liberty
18 interest in the statutory credits he lost following the December 12, 2020 disciplinary
19 hearing regarding the October incident.⁶ (See ECF No. 38 at 2, n.1.) However,
20 Defendants argue Sledge has failed to establish that his due process rights were violated,
21 and Defendants are immune from any alleged unlawful conduct under the doctrine of
22 qualified immunity. (ECF No. 32 at 16-23, 24-27.) Defendants also argue that none of the
23 Defendants personally participated in the alleged constitutional violation. (*Id.* at 10-14.)
24 At summary judgment, Defendants must show that there is absence of evidence to

25 ⁶ Because Sledge was not disciplined for the September incident, he has no liberty
26 interest from the Defendants alleged actions pertaining to the September incident. (See
27 ECF No. 32-7 at 3.) Because there is no liberty interest arising from the Defendants
28 alleged actions pertaining to the September incident, there are no due process concerns.
See *Sandin v. Conner*, 515 U.S. 472, 487 (1995). The Court's analysis focuses on
whether Sledge's due process rights have been violated following the October incident.

1 support Sledge's claim of a due process violation or that a reasonable jury would not be
 2 able to find in Sledge's favor. See *Pakootas v. Teck Cominco Metals, Ltd.*, 905 F.3d at
 3 593-94. The Court addresses each element of disciplinary due process as it pertains to
 4 Sledge's claim in turn.

5 **1. Fourteenth Amendment Disciplinary Due Process**

6 The Fourteenth Amendment provides, "[n]o State shall . . . deprive any person of
 7 life, liberty, or property, without due process of law." U.S. Const. amend XIV, § 1. The
 8 plaintiff must first establish the existence of a liberty interest for which the protection is
 9 sought. *Sandin v. Conner*, 515 U.S. 472, 487 (1995). Once the plaintiff has established
 10 one of these interests is at stake, the court's analysis turns to whether the inmate suffered
 11 a denial of adequate procedural protections. *Biggs v. Terhune*, 334 F.3d 910, 913 (9th
 12 Cir. 2003) (citations omitted).

13 "The Supreme Court established in *Wolff v. McDonnell* that there are procedural
 14 due process rights that a prisoner must be afforded in the context of a prison disciplinary
 15 proceeding prior to being deprived of a protected liberty interest." *Melnik v. Dzurenda*, 14
 16 F.4th 981, 985 (9th Cir. 2021) (citing *Wolff v. McDonnell*, 418 U.S. 539, 555-72 (1974)).
 17 When a protected liberty interest exists and a prisoner faces disciplinary charges, prison
 18 officials must provide the prisoner with (1) a written statement at least twenty-four hours
 19 before the disciplinary hearing that includes the charges, a description of the evidence
 20 against the prisoner, and an explanation for the disciplinary action taken; (2) an
 21 opportunity to present documentary evidence and call witnesses, unless calling witnesses
 22 would interfere with institutional security; and (3) legal assistance where the charges are
 23 complex or the inmate is illiterate. See *Wolff*, 418 U.S. at 563-70; see also *Ashker v.*
 24 *Newsom*, 81 F.4th 863, 878 (9th Cir. 2023) ("Among other requirements, *Wolff* requires
 25 that an inmate facing a disciplinary hearing be provided written notice of the charges and
 26 the ability to call witnesses and present documentary evidence in his defense.").

27 "[I]f state procedures rise above the floor set by the due process clause, a state
 28 could fail to follow its own procedures yet still provide sufficient process to survive

1 constitutional scrutiny.” *Walker v. Sumner*, 14 F.3d 1415, 1420 (9th Cir. 1994). Thus, an
2 inmate's right to due process is violated only if he is not provided with process sufficient
3 to meet the standards outlined in *Wolff*. *Id.*

4 **i. Written Statement**

5 Defendants argue Sledge was provided with a written notice of the October
6 incident charge at least twenty-four hours before his disciplinary hearing and the written
7 statement contained information as to the evidence relied upon and the reasons for the
8 disciplinary action. (ECF No. 32 at 18-19.) Defendants have provided the “Notice of
9 Charge” pertaining to the October incident, which was served on Sledge on October 30,
10 2020, well over twenty-four hours before the hearing that took place on December 12,
11 2020. (See ECF No. 32-9 at 1.) The notice provides a clear summary of the violation
12 including the investigation report number, the prison regulations violated, the individuals
13 involved in the incident and investigation, and other potential evidence available for
14 Sledge to review. (*Id.*) The investigation report for the October incident also provides a
15 summary of the violation, the individuals involved, and potential evidence available for
16 Sledge to review. (ECF No. 32-10 at 1.) Additionally, Defendants provided evidence to
17 show that Sledge himself acknowledged the receipt of the written notice and was aware
18 of the information within. (ECF No. 32-14 at 8.)

19 Based on the above evidence, the Court finds Defendants have submitted
20 sufficient evidence to show that Sledge was provide a written notice of the charges at
21 least twenty-four hours before the disciplinary hearing that included a written statement
22 of the charges and the description of the evidence. Therefore, the Court finds Defendants
23 have met their initial burden on summary judgment by showing the absence of a genuine
24 issue of material fact as to the written statement requirement. *See Celotex Corp.*, 477
25 U.S. at 325. The burden now shifts to Sledge to produce evidence that demonstrates an
26 issue of fact exists as to whether Defendants failed to provide a proper written statement.
27 *See Nissan*, 210 F.3d at 1102.

28 In his opposition, Sledge asserts facts surrounding the September incident and

1 raises arguments of retaliation and “fraud on the Court.” (ECF No. 36.) More specifically,
2 Sledge asserts the October incident was retaliation and Defendants have filed the “same
3 false evidence” for the October incident that was used in the September incident for which
4 he was found not guilty. (*Id.*) As Defendants aptly note, Sledge failed to raise an argument
5 regarding the notice of charges and the accompanying written statement. (ECF No. 38 at
6 9.) Sledge does not provide any evidence to support these claims, even if the Court was
7 permitted to evaluate the merit of these arguments. Furthermore, Defendants correctly
8 point out that a claim of retaliation was alleged for the first instance in Sledge’s opposition
9 and was not screened by the Court. (*Id.*; ECF No. 12.) Additionally, the Court has
10 reviewed the Defendants exhibits pertaining to the September and October incidents and
11 finds that Defendants have not perpetuated fraud on the Court because the evidence
12 used in the September and October incidents were distinct and independently supported
13 and Sledge has not provided any evidence to demonstrate otherwise. (See ECF Nos. 32-
14 6; 32-7; 32-9; 32-10.)

15 Therefore, Sledge has failed to meet his burden on summary judgment to establish
16 that he was not provide an adequate written notice of the charges at least twenty-four
17 hours before the disciplinary hearing that included a written statement of the charges and
18 the description of the evidence.

19 Based on the above, the Court recommends granting Defendants’ motion for
20 summary judgment as to the first prong of Sledge’s disciplinary due process claim.

21 **ii. Opportunity to Review and Present Evidence**

22 “Chief among the due process minima outlined in *Wolff* [is] the right of an inmate
23 to call and present witnesses and documentary evidence in his defense before the
24 disciplinary board.” *Ponte v. Real*, 471 U.S. 491, 495 (1985). Inmates have “a
25 constitutional right under the Due Process Clause of the Fourteenth Amendment to be
26 permitted to examine documentary evidence for use in the prison disciplinary hearing.”
27 *Melnik*, 14 F.4th at 984. “If a prisoner must be allowed to present evidence in his defense,
28 it necessarily follows that he must have some right to prepare for that presentation. With

1 no access to the evidence that will be presented against him, a prisoner could neither
2 build a defense nor develop arguments and evidence to contest the allegations at the
3 disciplinary hearing.” *Id.* at 985. “[A] prisoner’s right to present a defense must extend to
4 the preparation of a defense, including compiling evidence.” *Id.* at 986.

5 “When prison officials limit an inmate’s efforts to defend himself, they must have a
6 legitimate penological reason.” *Koenig v. Vannelli*, 971 F.2d 422, 423 (9th Cir. 1992). An
7 inmate’s right to present witnesses may legitimately be limited by “the penological need
8 to provide swift discipline in individual cases . . . [or] by the very real dangers in prison life
9 which may result from violence or intimidation directed at either other inmates or staff.”
10 *Ponte* 471 U.S. at 495. Likewise, “an inmate facing disciplinary proceedings should be
11 allowed to . . . present documentary evidence in his defense when permitting him to do
12 so w[ould] not be unduly hazardous to institutional safety or correctional goals.” *Wolff*,
13 418 U.S. at 566. The burden of proving adequate justification for denial of a request to
14 present witnesses or produce documentary evidence rests with the prison officials. *Ponte*,
15 471 U.S. at 499. “The requirements of due process are satisfied if some evidence
16 supports” the disciplinary decision. *Superintendent, Mass. Corr. Inst., Wapole v. Hill*, 472
17 U.S. 445, 455 (1985).

18 Defendants argue Sledge was given ample opportunity to review the evidence
19 before the hearing and to call witnesses and present documentary evidence at the
20 October incident hearing. (ECF No. 32 at 19-22.) As stated above, Defendants provided
21 the written notice of charges which reference the investigation report prepared by Officer
22 Holloway. Sledge had over a month to request a copy of the investigation report or for
23 other evidence regarding the incident via kite. Defendants have provided evidence which
24 show Sledge did not submit a kite for the investigation reports nor any kites requesting
25 evidence pertaining to the October incidents. (See ECF No. 32-16.) Defendants further
26 note Sledge did file grievances seeking evidence but the proper protocol for Sledge to
27 request the information was through kites per Administrative Regulation 740. (ECF Nos.
28 32-14 at 8; 32-20 at 9.)

1 Defendants further argue much of the evidence that was relevant for the hearing
2 could not be provided to Sledge due to concerns of institutional safety. (ECF No. 32 at
3 21.) For example, Defendants argue the original envelope could not be provided as it
4 would permit the introduction of contraband to the inmate population. (*Id.*) Defendants
5 also argue some information related to access control, test procedures, and prison
6 guidelines could not be provided as it would provide information on how to circumvent
7 NDOC safeguards. (*Id.*)

8 Defendants also provide evidence regarding the October incident hearing which
9 took place on December 12, 2020. During the hearing, the disciplinary hearing officer
10 provided Sledge the opportunity to call witnesses. (*Id.* at 22.) Sledge called Officer
11 Holloway but was informed that Officer Holloway was not working that day and any
12 relevant information Officer Holloway could provide was available through the
13 investigation report. (*Id.*)

14 Based on the above evidence, the Court finds Defendants have submitted
15 sufficient evidence to show Sledge was given the opportunity to review the evidence and
16 present a defense. Therefore, the Court finds Defendants has met their initial burden on
17 summary judgment by showing the absence of a genuine issue of material fact as to the
18 opportunity to review and present evidence. *See Celotex Corp.*, 477 U.S. at 325. The
19 burden now shifts to Sledge to produce evidence that demonstrates an issue of fact exists
20 as to this element. *See Nissan*, 210 F.3d at 1102.

21 In his opposition, Sledge again asserts arguments of retaliation and “fraud on the
22 Court.” (ECF No. 36.) Sledge asserts he “requested to see the evidence against him but
23 was denied.” (*Id.* at 3.) However, he provides no evidence or further information to support
24 his assertions. He provides no evidence to demonstrate Defendants perpetuated fraud
25 by submitting evidence used in the September incident hearing as evidence for the
26 October incident. Sledge’s mere assertions and “metaphysical doubt as to the material
27 facts” will not defeat a properly supported and meritorious summary judgment motion.
28 *See Matsushita*, 475 U.S. at 586-87.

1 The Court finds Defendants have provided sufficient evidence to show Sledge had
2 ample opportunity to request and review evidence but failed to do so through the proper
3 procedures. As the Ninth Circuit noted in *Melnik*, the inmate's request to review the
4 evidence "need not be extremely detailed" but it "should be sufficient to put the prison
5 official on notice of what is sought." 14 F.4th at 987. Furthermore, Defendants correctly
6 note some of the evidence would not be available for Sledge to review due to a legitimate
7 penological justification of preventing the spread of contraband and information regarding
8 NDOC safeguards. *Melnik* requires prison officials to permit the viewing of certain
9 evidence through alternative means such as copies or photographs. *Id.*; see also *McNeil*
10 *v. Gittere*, No. 3:20-CV-00668-APG-CSD, 2023 WL 3881372, at *3 (D. Nev. Jan. 10,
11 2023), *report and recommendation adopted*, No. 3:20-CV-00668-APG-CSD, 2023 WL
12 3615348 (D. Nev. May 22, 2023) (finding an issue of fact when the plaintiff properly
13 "requested all of the evidence being used against him" and Defendants failed to provide
14 alternatives means to review evidence of contraband). But again, Sledge did not properly
15 request for any evidence prior to the hearing through proper means. Finally, Sledge was
16 not denied due process at the disciplinary hearing as he had the opportunity to present
17 his case and call witnesses.

18 Therefore, Sledge has failed to meet his burden on summary judgment to establish
19 that he was not provided the opportunity to review evidence, present his case, and call
20 witnesses.

21 Based on the above, the Court recommends granting Defendants' motion for
22 summary judgment as to the second prong of Sledge's disciplinary due process claim.

23 iii. **Legal Assistance When Necessary**

24 Finally, inmates must be afforded legal assistance where the charges are complex,
25 or the inmate is illiterate. *Wolff*, 418 U.S. at 563-70. This concern is not present in the
26 instant case, as the record reflects Sledge's ability to file and prosecute the instant case
27 as a *pro se* party. Sledge's ability to litigate the instant case shows he is not illiterate, and
28 the charges are not too complex. Sledge has provided no argument in his opposition to

1 demonstrate otherwise. Thus, the Court recommends granting Defendants' motion for
 2 summary judgment as to the third prong of Sledge's disciplinary due process claim as
 3 well.

4 Based on the above, the Court finds Defendants are entitled to summary judgment
 5 as to Sledge's claim of lack of disciplinary due process and recommends that Defendants'
 6 motion be granted.⁷

7 **2. Personal Participation**

8 Even though the Court finds Sledge's Fourteenth Amendment rights were not
 9 violated, the Court addresses Defendants' arguments related to personal participation.
 10 Defendants argue that Daniels, Suwe, Olson, and Holloway did not personally participate
 11 in the alleged constitutional violation and are entitled to summary judgment on this
 12 alternate basis. (ECF No. 32 at 10-13.)

13 "Liability under [§] 1983 arises only upon a showing of personal participation by
 14 the defendant." *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989) (citations omitted); see
 15 also *Ashcroft v. Iqbal*, 556 U.S. 662, 676 (2009) ("Because vicarious liability is
 16 inapplicable to Bivens and § 1983 suits, a plaintiff must plead that each Government-
 17 official defendant, through the official's own individual actions, has violated the
 18 Constitution."). A person deprives another "of a constitutional right, within the meaning of
 19 section 1983, if he does an affirmative act, participates in another's affirmative acts, or
 20 omits to perform an act which he is legally required to do that causes the deprivation of
 21 which [the plaintiff complains]." *Leer v. Murphy*, 844 F.2d 628, 633 (9th Cir. 1988).

22 Defendants have provided evidence to show neither Daniels, Suwe, nor Olson
 23 received any kites or grievances regarding the October incident. (ECF No. 32 at 10-13.)
 24 Daniels, Suwe, or Olson were not aware of Sledge's disciplinary hearings, let alone
 25 participated in the hearings or the events leading up to the hearings. (*Id.*) Furthermore,
 26 regarding Suwe, Defendants provide evidence establishing that Suwe became an

27 ⁷ Because the Court recommends Defendants' motion for summary judgment be
 28 granted on the merits of the disciplinary due process claim, it need not address
 Defendants' argument regarding qualified immunity.

1 institutional investigator after Sledge's hearings had already completed and thus did not
2 personally participate in the investigations for either incident. (*Id.*)

3 Regarding Officer Holloway, Defendants provide evidence establishing that even
4 though Officer Holloway issued the notice of charges, Officer Holloway did not receive
5 any kites or grievances between the service of the notice and the disciplinary hearing.
6 (*Id.*) Officer Holloway was not requested by Sledge for an opportunity to review evidence.
7 Officer Holloway was not listed in any of Sledge's grievances during the underlying
8 events. Officer Holloway was not present at the disciplinary hearing and as stated above,
9 the disciplinary hearing officer found it acceptable for Officer Holloway to be absent from
10 the hearing. Accordingly, the Court finds Defendants have provided sufficient evidence to
11 show that none of the named Defendants personally participated in Sledge's alleged
12 claim of lack of disciplinary due process.

13 Based on the above, the Court finds Defendants have met their initial burden to
14 show they did not personally participate in any alleged disciplinary due process violation.
15 The burden shifts to Sledge to establish that a genuine dispute of material facts does
16 exist. *See Matsushita*, 475 U.S. at 586. However, Sledge makes no argument in his
17 opposition regarding personal participation. (See ECF No. 36.) Furthermore, based on
18 the evidence provided by Defendants, there is no evidence Sledge could provide which
19 establishes a causal connection between Defendants' actions and Sledge's alleged
20 constitutional violation. *See Ashcroft*, 556 U.S. at 676 (for § 1983 suits, a plaintiff must
21 plead that each Government-official defendant, through the official's own individual
22 actions, has violated the Constitution.) The evidence submitted by Defendants shows that
23 the investigation process is entirely independent from the process for assessing the
24 sanctions.

25 Accordingly, the Court recommends Defendants' motion for summary judgment,
26 (ECF No. 32), be granted on this independent basis.

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1 **B. Sledge's Motion for Summary Judgment**

2 Sledge also moves for summary judgment on his claim of lack of due process for
 3 his disciplinary hearings. (ECF No. 31.) Other than a few brief sentences regarding some
 4 of the facts of the case and exhibits pertaining to the September incident and its
 5 disciplinary hearings, Sledge's motion is largely incoherent, and it is unclear to the Court
 6 what Sledge is asserting as a basis for summary judgment. (See *id.*) Defendants'
 7 opposition to Sledge's motion is substantively identical to Defendants' motion for
 8 summary judgment. (See ECF Nos. 32, 35.) Based on the Court's review of the parties
 9 briefing as it relates to Sledge's motion and the Court's analysis of Defendants' motion,
 10 the Court recommends denying Sledge's motion for summary judgment.

11 **IV. CONCLUSION**

12 For good cause appearing and for the reasons stated above, the Court
 13 recommends that Sledge's motion for summary judgment, (ECF No. 31), be denied,
 14 Defendants' motion for summary judgment, (ECF No. 32), be granted.

15 The parties are advised:

16 1. Pursuant to 28 U.S.C. § 636(b)(1)(c) and Rule IB 3-2 of the Local Rules of
 17 Practice, the parties may file specific written objections to this Report and
 18 Recommendation within fourteen days of receipt. These objections should be entitled
 19 "Objections to Magistrate Judge's Report and Recommendation" and should be
 20 accompanied by points and authorities for consideration by the District Court.

21 2. This Report and Recommendation is not an appealable order and any
 22 notice of appeal pursuant to Fed. R. App. P. 4(a)(1) should not be filed until entry of the
 23 District Court's judgment.

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1 **V. RECOMMENDATION**

2 **IT IS THEREFORE RECOMMENDED** that Sledge's motion for summary
3 judgment, (ECF No. 31), be **DENIED**.

4 **IT IS FURTHER RECOMMENDED** that Defendants' motion for summary
5 judgment, (ECF No. 32), be **GRANTED**.

6 **IT IS FURTHER RECOMMENDED** that Defendant Peterman be **DISMISSED**
7 **WITHOUT PREJUDICE**.

8 **IT IS FURTHER RECOMMENDED** that the Clerk **ENTER JUDGMENT** in favor of
9 Defendants and **CLOSE** this case.

10 **DATED:** April 24, 2025

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13 **UNITED STATES MAGISTRATE JUDGE**
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